

110TH CONGRESS
1ST SESSION

S. 149

To address the effect of the death of a defendant in Federal criminal proceedings.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mrs. FEINSTEIN (for herself and Mr. SESSIONS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To address the effect of the death of a defendant in Federal criminal proceedings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Crime Vic-

5 tims’ Restitution Act of 2007”.

6 **SEC. 2. EFFECT OF DEATH OF A DEFENDANT IN FEDERAL**
7 **CRIMINAL PROCEEDINGS.**

8 (a) IN GENERAL.—Subchapter A of chapter 227 of
9 title 18, United States Code, is amended by adding at the
10 end the following:

1 **“§ 3560. Effect of death of a defendant in Federal**
 2 **criminal proceedings**

3 “(a) GENERAL RULE.—Notwithstanding any other
 4 provision of law, the death of a defendant who has been
 5 convicted of a Federal criminal offense shall not be the
 6 basis for abating or otherwise invalidating a plea of guilty
 7 or nolo contendere accepted, a verdict returned, a sentence
 8 announced, or a judgment entered prior to the death of
 9 that defendant, or for dismissing or otherwise invalidating
 10 the indictment, information, or complaint on which such
 11 a plea, verdict, sentence, or judgment is based, except as
 12 provided in this section.

13 “(b) DEATH AFTER PLEA OR VERDICT.—

14 “(1) ENTRY OF JUDGMENT.—If a defendant
 15 dies after a plea of guilty or nolo contendere has
 16 been accepted or a verdict has been returned, but
 17 before judgment is entered, the court shall enter a
 18 judgment incorporating the plea of guilty or nolo
 19 contendere or the verdict, with the notation that the
 20 defendant died before the judgment was entered.

21 “(2) PUNITIVE SANCTIONS.—

22 “(A) DEATH BEFORE SENTENCE AN-
 23 NOUNCED.—If a defendant dies after a plea of
 24 guilty or nolo contendere has been accepted or
 25 a verdict has been returned and before a sen-
 26 tence has been announced, no sentence of pro-

bation, supervision, or imprisonment may be imposed, no criminal forfeiture may be ordered, and no liability for a fine or special assessment may be imposed on the defendant or the defendant's estate.

“(B) DEATH AFTER SENTENCING OR JUDGMENT.—The death of a defendant after a sentence has been announced or a judgment has been entered, and before that defendant has exhausted or waived the right to a direct appeal—

“(i) shall terminate any term of probation, supervision, or imprisonment, and shall terminate the liability of that defendant to pay any amount remaining due of a criminal forfeiture, of a fine under section 3613(b), or of a special assessment under section 3013; and

“(ii) shall not require return of any portion of any criminal forfeiture, fine, or special assessment already paid.

“(3) RESTITUTION.—

“(A) DEATH BEFORE SENTENCE ANNOUNCED.—If a defendant dies after a plea of guilty or nolo contendere has been accepted or a verdict has been returned and before a sen-

tence has been announced, the court shall, upon a motion under subsection (c)(2) by the Government or any victim of that defendant's crime, commence a special restitution proceeding at which the court shall adjudicate and enter a final order of restitution against the estate of that defendant in an amount equal to the amount that would have been imposed if that defendant were alive.

“(B) DEATH AFTER SENTENCING OR JUDGMENT.—The death of a defendant after a sentence has been announced shall not be a basis for abating or otherwise invalidating restitution announced at sentencing or ordered after sentencing under section 3664(d)(5) of this title or any other provision of law.

“(4) CIVIL PROCEEDINGS.—The death of a defendant after a plea of guilty or nolo contendere has been accepted, a verdict returned, a sentence announced, or a judgment entered, shall not prevent the use of that plea, verdict, sentence, or judgment in civil proceedings, to the extent otherwise permitted by law.

“(c) APPEALS, MOTIONS, AND PETITIONS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), after the death of a defendant convicted
3 in a criminal case—

4 “(A) no appeal, motion, or petition by or
5 on behalf of that defendant or the personal rep-
6 resentative or estate of that defendant, the Gov-
7 ernment, or a victim of that defendant’s crime
8 seeking to challenge or reinstate a plea of guilty
9 or nolo contendere accepted, a verdict returned,
10 a sentence announced, or a judgment entered
11 prior to the death of that defendant shall be
12 filed in that case after the death of that defend-
13 ant; and

14 “(B) any pending motion, petition, or ap-
15 peal in that case shall be dismissed with the no-
16 tation that the dismissal is due to the death of
17 the defendant.

18 “(2) EXCEPTIONS.—

19 “(A) RESTITUTION.—If a defendant dies
20 after being convicted in a criminal case but
21 prior to sentencing or the exhaustion or waiver
22 of direct appeal, the personal representative of
23 that defendant, the Government, or any victim
24 of that defendant’s crime may file or pursue an
25 otherwise permissible direct appeal, petition for

mandamus or a writ of certiorari, or an otherwise permissible motion described in section 3663, 3663A, 3664, or 3771, to the extent that the appeal, petition, or motion raises an otherwise permissible claim to—

“(i) obtain, in a special restitution proceeding, a final order of restitution under subsection (b)(3);

“(ii) enforce, correct, amend, adjust, reinstate, or challenge any order of restitution; or

“(iii) challenge or reinstate a verdict, plea of guilty or nolo contendere, sentence, or judgment on which—

“(I) a restitution order is based;

or

“(II) restitution is being or will be sought by an appeal, petition, or motion under this paragraph.

“(B) OTHER CIVIL ACTIONS AFFECTED.—

If a defendant dies after being convicted in a criminal case but prior to sentencing or the exhaustion or waiver of direct appeal, the personal representative of that defendant, the Government, or any victim of that defendant’s

1 crime may file or pursue an otherwise permis-
2 sible direct appeal, petition for mandamus or a
3 writ of certiorari, or an otherwise permissible
4 motion under the Federal Rules of Criminal
5 Procedure, to the extent that the appeal, peti-
6 tion, or motion raises an otherwise permissible
7 claim to challenge or reinstate a verdict, plea of
8 guilty or nolo contendere, sentence, or judgment
9 that the appellant, petitioner, or movant shows
10 by a preponderance of the evidence is, or will
11 be, material in a pending or reasonably antici-
12 pated civil proceeding, including civil forfeiture
13 proceedings.

14 “(C) COLLATERAL CONSEQUENCES.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in subparagraphs (A) and (B), the
17 Government may not restrict any Federal
18 benefits or impose collateral consequences
19 on the estate or a family member of a de-
20 ceased defendant based solely on the con-
21 viction of a defendant who died before that
22 defendant exhausted or waived the right to
23 direct appeal unless, not later than 90
24 days after the death of that defendant, the
25 Government gives notice to that estate or

1 family member of the intent of the Govern-
 2 ment to take such action.

3 “(ii) PERSONAL REPRESENTATIVE.—
 4 If the Government gives notice under
 5 clause (i), the court shall appoint a per-
 6 sonal representative for the deceased de-
 7 fendant that is the subject of that notice,
 8 if not otherwise appointed, under section
 9 (d)(2)(A).

10 “(iii) TOLLING.—If the Government
 11 gives notice under clause (i), any filing
 12 deadline that might otherwise apply
 13 against the defendant, the estate of the de-
 14 fendant, or a family member of the defend-
 15 ant shall be tolled until the date of the ap-
 16 pointment of that defendant’s personal
 17 representative under clause (ii).

18 “(3) BASIS.—In any appeal, petition, or motion
 19 under paragraph (2), the death of the defendant
 20 shall not be a basis for relief.

21 “(d) PROCEDURES REGARDING CONTINUING LITIGA-
 22 TION.—

23 “(1) IN GENERAL.—The standards and proce-
 24 dures for a permitted appeal, petition, motion, or
 25 other proceeding under subsection (c)(2) shall be the

standards and procedures otherwise provided by law, except that the personal representative of the defendant shall be substituted for the defendant.

“(2) SPECIAL PROCEDURES.—If continuing litigation is initiated or could be initiated under subsection (c)(2), the following procedures shall apply:

“(A) NOTICE AND APPOINTMENT OF PERSONAL REPRESENTATIVE.—The district court before which the criminal case was filed (or the appellate court if the matter is pending on direct appeal) shall—

“(i) give notice to any victim of the convicted defendant under section 3771(a)(2), and to the personal representative of that defendant or, if there is none, the next of kin of that defendant; and

“(ii) appoint a personal representative for that defendant, if not otherwise appointed.

“(B) COUNSEL.—Counsel shall be appointed for the personal representative of a defendant convicted in a criminal case who dies if counsel would have been available to that defendant, or if the personal representative of that defendant requests counsel and otherwise

1 qualifies for the appointment of counsel, under
2 section 3006A.

3 “(C) TOLLING.—The court shall toll any
4 applicable deadline for the filing of any motion,
5 petition, or appeal during the period beginning
6 on the date of the death of a defendant con-
7 victed in a criminal case and ending on the
8 later of—

9 “(i) the date of the appointment of
10 that defendant’s personal representative;
11 or

12 “(ii) where applicable, the date of the
13 appointment of counsel for that personal
14 representative.

15 “(D) RESTITUTION.—If restitution has not
16 been fully collected on the date on which a de-
17 fendant convicted in a criminal case dies—

18 “(i) any amount owed under a restitu-
19 tion order (whether issued before or after
20 the death of that defendant) shall be col-
21 lectible from any property from which the
22 restitution could have been collected if that
23 defendant had survived, regardless of
24 whether that property is included in the es-
25 tate of that defendant;

1 “(ii) any restitution protective order
 2 in effect on the date of the death of that
 3 defendant shall continue in effect unless
 4 modified by the court after hearing or pur-
 5 suant to a motion by the personal rep-
 6 resentative of that defendant, the Govern-
 7 ment, or any victim of that defendant’s
 8 crime; and

9 “(iii) upon motion by the Government
 10 or any victim of that defendant’s crime,
 11 the court shall take any action necessary to
 12 preserve the availability of property for
 13 restitution under this section.

14 “(e) FORFEITURE.—

15 “(1) IN GENERAL.—Except as provided in para-
 16 graph (2), the death of an individual does not affect
 17 the Government’s ability to seek, or to continue to
 18 pursue, civil forfeiture of property as authorized by
 19 law.

20 “(2) TOLLING OF LIMITATIONS FOR CIVIL FOR-
 21 FEITURE.—Notwithstanding the expiration of any
 22 civil forfeiture statute of limitations or any time lim-
 23 itation set forth in section 983(a) of this title, not
 24 later than the later of the time period otherwise au-
 25 thorized by law and 2 years after the date of the

1 death of an individual against whom a criminal in-
 2 dictment alleging forfeiture is pending, the Govern-
 3 ment may commence civil forfeiture proceedings
 4 against any interest in any property alleged to be
 5 forfeitable in the indictment of that individual.

6 “(f) DEFINITIONS.—In this section—

7 “(1) the term ‘accepted’, relating to a plea of
 8 guilty or nolo contendere, means that a court has
 9 determined, under rule 11(b) of the Federal Rules of
 10 Criminal Procedure, that the plea is voluntary and
 11 supported by a factual basis, regardless of whether
 12 final acceptance of that plea may have been deferred
 13 pending review of a presentence report or otherwise;

14 “(2) the term ‘announced’, relating to a sen-
 15 tence, means that the sentence has been orally stat-
 16 ed in open court;

17 “(3) the term ‘convicted’ refers to a defend-
 18 ant—

19 “(A) whose plea of guilty or nolo
 20 contendere has been accepted; or

21 “(B) against whom a verdict of guilty has
 22 been returned;

23 “(4) the term ‘direct appeal’ means an appeal
 24 filed, within the period provided by rule 4(b) of the
 25 Federal Rules of Appellate Procedure, from the

1 entry of the judgment or order of restitution, includ-
 2 ing review by the Supreme Court of the United
 3 States; and

4 “(5) the term ‘returned’, relating to a verdict,
 5 means that the verdict has been orally stated in
 6 open court.”.

7 (b) CONFORMING AMENDMENT.—The table of sec-
 8 tions for chapter 227 of title 18, United States Code, is
 9 amended by adding at the end the following:

“3560. Effect of death of a defendant in Federal criminal proceedings.”.

10 **SEC. 3. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to any
 12 criminal case or appeal pending on or after July 1, 2007.

13 **SEC. 4. SEVERABILITY.**

14 If any provision of this Act, any amendment made
 15 by this Act, or the application of such provision or amend-
 16 ment to any person or circumstance is held to be unconsti-
 17 tutional, the remainder of the provisions of this Act, the
 18 amendments made by this Act, and the application of such
 19 provisions or amendments to any person or circumstance
 20 shall not be affected.

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